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File No. 43/52

Legal Department

G **BRANCH**

Subject:—

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Opinion on the
Cotton Textile (Control)
Order, 1948

1952

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Since the licence had expired, the shop-keeper was acting properly in refusing to sell. His refusal to sell will be a circumstance negativing the inference that he had stored cloth for sale. It would be open to him to argue that looking to the quantity of cloth, namely, 285 yards (including 76 yds. without the prescribed marking) and his stated declared intention not to sell in view of the expiry of the licence, he cannot be said to have stored the cloth for sale, but that the cloth had remained over out of the stocks which he had for sale under the licence. It appears that there was no legal obligation upon him to make a declaration of the stocks which thus remained over on the lapse or the expiry of the licence. In respect of the 76 yds of non-marked cloth, it will be equally possible for him to urge that this was kept for his bona fide personal requirement. In these circumstances, a prosecution does not seem expedient.

O/C Sd/- 1/4

Remembrancer of Legal Affairs.

U.R. to S.T.C. No. C-145, dated 2nd April 1952.

4 c.
V.R.R.
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Office of the A.I.A.

The strict letter of the law may no doubt favour a prosecution. However, having regard to the request made by the Textile Commissioner himself that the bales in question should be allowed to be moved to the original purchaser, Messrs. Jitmal Ramgopal, a prosecution does not seem expedient; since in view of this conflict between the Textile Commissioner and the State Textile Controller and the support given by the Textile Commissioner to the contention of the accused the court will be extremely reluctant to award punishment, even though it may hold the offence of the breach of the State Textile Controller's direction as technically established.

O/C Sd/-
17/1

Remembrancer of Legal Affairs.

U.R. to S.T.C. No. G-39, dated the 18th January 1952.

4 c.
V.R.K.
24/7/56

Office of the R.L.A.

In this case the Police Prosecutor is of the opinion that all the Accused should be prosecuted for breach of clause 23(1)(d) and (f) of the Cotton Textile (Control) Order, 1948 and Accused Nos. 4 to 6 under clause 3 of the Cotton Textile (Control of Movement) Order, 1942. The State Textile Controller's office is of the opinion that the Accused should also be prosecuted under sections 6 and 7 of the Indian Merchandise Marks Act as the offences amount to putting wrong trade description of cloth and also for breach of clause 23(1)(e) of the Cotton Textile (Control) Order, 1948.

It does not seem necessary to add the clause 23(1)(e) as suggested by the State Textile Controller. However it would be advisable to prosecute the Accused under section 6 and 7 of the Indian Merchandise Marks Act, for applying false trde description to goods and for selling or having in possession for sale goods to which false trade description is applied.

Prosecution should consider the desirability of not prosecuting accused No. 6 Chandratan Mulchand Dujari but examining him as prosecution witness, because without his evidence the prosecution case will rest merely on circumstantial evidence. That circumstantial evidence may not by itself be sufficient for the prosecution to be successful unless it can be positively established that the alleged transactions of sale of 24 bales in Bombay (11 to Kishanlal Bhagwandas and 13 to Kevalram Thakordas) and the purchase of 24 alleged handloom bales from Ratanlal Premchand and Gokuldas Kundanmal and their license Numbers and sales tax certificate mentioned in the respective anddas are bogus.

O/C 22/-
10/3

Remembrancer of Legal Affairs.

U.O. to S.T.C. No. C-108, dated the 10th March 1952.
4 c. V.R.K. 24/7/56

Office of the R.L.A.

Sub-clause (3) of clause 24 of the Cotton Textiles (Control) Order, 1948 provides that no person acting as a commission agent in respect of a sale of cloth or yarn to which sub-clause (2) applies shall receive a commission which exceeds 1/2% of the maximum price of the cloth or yarn, the subject matter of such sale. The Cotton Textiles (Control) Order is issued by the Central Government under section 3 of the Essential Supplies (Temporary Powers) Act and the Bombay Cotton Cloth Dealers Licensing Order, 1949 has been issued under section 3 of the said Act read with the delegation notification No. 73/1-TA/46, dated the 20th December 1946. This delegation notification provides that the delegation is subject to the condition that no order made by any State Government in the exercise of the delegated powers shall have effect in so far as it is repugnant to any order made under section 3 by the Central Government. There is therefore no substance in the contention of the Association that because there is no provision for licensing commission agents in the Bombay Cotton Cloth Dealers Licensing Order, section 24(3) of the Cotton Textiles (Control) Order becomes inoperative. The other contention that this is a technical error in that instead of mentioning profit, commission charges were mentioned is also not acceptable. If the margin for profit is 14, no dealer is likely to sell the goods for 1%. On both the grounds therefore there is no case for withdrawal.

However the matter will have to be examined from another angle. Sub-clause (3) of cl. 24 applies only to sales to which sub-clause (2) applies. Now sub-clause (2) seems to apply only when the sale is from a dealer to another dealer. If the adat is charged in this case in respect of sales by a manufacturer to a dealer then sub-clause (3) would not apply. This will have to be verified by the State Textile Controller.

O/C 31/- 27/3

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. C-131, dated the 28th March 1952.

4 c.

V.R.K.
24/7/52

Office of the R.L.A.

Sub-clause (2) of clause 25 of the Cotton Textiles (Control) Order, 1948 provides that no manufacturer or dealer shall buy or sell or have in his possession any cloth or yarn after the expiration of 12 months from the last day of the month marked on the cloth or yarn in accordance with a direction given under clause 24 and no person shall buy or sell or have in his possession any cloth or yarn in unopened bales or cases after the expiration from the said date of a period of 3 months in the case of a manufacturer and a period of six months in any other case. Clause 26 of the said order provides that notwithstanding anything contained in sub-clause (2) of clause 25, any cloth or yarn not disposed of within the period specified may be kept and sold by a dealer subject to the conditions notified in this behalf by the Textile Commissioner prescribing the special markings to be made on such cloth or yarn, the agency by which the markings shall be made, the fee payable for such marking. The Textile Commissioner has under his notification No. 9(9) Tex.1/49(1), dated the 30th April 1949, prescribed the markings and the conditions subject to which cloth or yarn not disposed of within the period specified the clause 25(2) may be kept and sold by a dealer. Condition 6 in this notification provides as follows.

> "(6) The Provincial Government or such officers as it may appoint in this behalf may dispense with any of the stampings as aforesaid in respect of any stocks of cloth or yarn to which this notification applies and may direct the dealer or dealers in possession of such stocks to sell them in retail at prices not exceeding the maximum retail prices as specified in condition (4) above. The dealer or dealers shall comply with such directions."

Under its notification No. 518/VII, dated the 25th January 1951 the Government of Bombay has appointed the State Textile Controller Deputy State Textile Controller, and Assistant Textile Controllers to exercise all its functions specified in condition 6. The Assistant Textile Controller can therefore issue order to the dealers under clause 26 read with condition (6) of Textile Commissioner's Notification No. 9(9)Tex.1/49(1), dated the 30th April 1949 and the Civil Supplies Department Notification No. 518/VII, dated the 25th January 1951 dispensing with the necessity of getting the

time-barred cloth T.C.B. stamped upto the period mentioned by him.

As suggested by the Textile Commissioner's Office in their letter dated the 19th May 1952, directions can be issued under clause 29(3) of the Cotton Textiles (Control) Order, 1948, by the Controller but such directions can only be binding on a person who makes a report under sub-clause (1) or sub-clause (2) of clause 29 The word 'Controller' is defined in sub-clause (b) of clause 3 of the Cotton Textiles (Control) Order, 1948 as meaning the principal officer appointed by a State Government for the administration of textile control and includes any other officer appointed by such Government to perform the functionsof the controller under the rules, orders and notifications issued therunder. Although there is no specific provision requiring such appointment to be made by a notified order, it would be advisable to notify Assistant Textile Controller's appointment for performing functions of the controller for the purposes of clause 29(3).

O/C Sd/-
11/6

Remembrancer of Legal Affairs.

U.R. to S.T.C. No. G.-251, dated the 11th June 1952.

4 c.
V.R.K.
24/7/56

Office of the R. A.

The view taken in the State Textile Controller's office note dated the 5th June 1952 at page 44 ante that no action will lie against the mills for breach of clause 21(1) of the Cotton Textile (Control) Order, 1948 is correct as what is penal is packing in a bale less than 1450 yards whereas in this case 1470 yards were packed.

As regards prosecution for cheating attention is requested to the R.L.A.'s opinion No. 7165, dated the 30th July 1948. In such cases even if it were possible to prove in any case that the shortage was in the packing at the mills, it would be difficult to prove dishonest intention. The shortage may be attributable to negligence, carelessness etc. on the part of the packing staff.

The exact markings on the bale is not mentioned anywhere in the papers. If as stated at page 1 ante the yardage packed was on the bale 1500 yards and the bale actually contained 1470 yards then it would amount to false trade description as defined in sub-sections (2) and (3) of section 8 of the Indian Merchandise Marks Act, and it is doubtful whether any prosecution under section 6 & 7 of that Act would succeed in view of the fact that the accused mill would be able to prove that there was no intent to defraud or that they acted innocently. In respect of the packing staff also it would be difficult to fix liability on any person in particular in the absence of any other evidence in that behalf.

Regarding prosecution for short measure under section 32 of the Bombay Weight and Measures Act, it appears that that section is not intended to cover cases of sale by piece where in packing one take is missing. That section is in respect of selling things by the yard where in the same piece short measure is given. On the facts therefore this does not appear to be a fit case for prosecution irrespective of the amount involved. As at Ex. No. 24-1-C.

O/C 583- 11/3
Remembrancer of Legal Affairs.

M.E. to G.A.C. No. 0-383, dated the 11th August 1952.
V.R.K. 27/7/52